

**Before Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur**

Case No. CGRF(NUZ)/042/2005

- Applicant : M/s. AMA Enterprises
At. Loha Oli, Itwari,
Nagpur.
- Non-Applicant : The Nodal Officer,
Executive Engineer,
Gandhibag Division,
Nagpur representing the MSEDCL.
- Quorum Present : 1) Shri S.D. Jahagirdar, IAS (Retd),
Chairman,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.
- 2) Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.
- 3) Shri M.S. Shrisat
Exe. Engr. & Member Secretary,
Consumer Grievance Redressal
Forum, NUZ, MSEDCL, Nagpur.

ORDER (Passed on 13.09.2005)

The present grievance application is filed by the applicant in the prescribed schedule "A" on 18.07.2005 as per Regulation No. 6.3 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 here-in-after referred-to-as the said Regulations.

The grievance of the applicant is in respect of non-withdrawal of the cost of metering arrangement including cubicle and HT cables and non-issuance of the revised demand note as per terms & conditions specified in the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 here-in-after referred-to-as the Supply Code Regulations. The applicant's grievance is also in respect of non-withdrawal of demand penalty of Rs. 49,500/- for exceeding contract demand charged in his energy bills for the month of December, 2004 and onwards.

The matter was heard by us on 29.08.2005 when both the parties were present. Both of them were heard by us. Documents produced on record by both of them are also perused and examined by us.

In the instant case the applicant had first approached the Chief Engineer, NUZ, Nagpur on 11.11.2004 raising his grievances. There-after also he has diligently pursued the matter. Hence, although the applicant did not approach the Internal Grievance Redressal Unit in terms of Regulations No. 6.3 of the said Regulations, the requirement of the applicant first approaching the Internal Grievance Redressal Unit stands dispensed with. The reason for this dispensation is obvious. The Chief Engineer whom the applicant approached way back on 11.11.2004 ought to have forwarded his grievance to the Internal Grievance Redressal Unit for disposal within a period two months which has not been done

in the instant case. Hence, the applicant's grievance application can be entertained by this Forum even if he did not approach the Internal Grievance Redressal Unit. Such a dispensation is also confirmed by the MERC.

After receipt of the grievance application in question, the non-applicant was asked to furnish before this Forum his parawise remarks on the applicant's grievance application in terms of Regulation No. 6.7 & 6.8 of the said Regulations. Accordingly, the non-applicant submitted his parawise remarks dated 04.08.2005 on 06.08.2005. A copy thereof was given to the applicant on 22.08.2005 and he was given opportunity to offer his say on this parawise report also.

The applicant is represented by his nominated representative one Shri Rajendrakumar B. Goenka who presented the case of the applicant before this Forum on his behalf.

The applicant's representative contended that the applicant is the consumer of the non-applicant and availed supply of electricity at L.T. but after receiving a letter dated 18.12.1985 from the MSEB, he got 11 KV supply sanctioned with C.D. of 190 KVA with connected load of 253 KW on 02.03.1988. He got his load enhanced from 190 KVA C.D. to 265 KVA C.D. with a connected load of 320 KW as per the MSEB's sanction letter dated 30.08.1991. This sanctioned demand was subsequently reduced to 80 KVA on 16.01.2002 with connected load of 238 KW.

The applicant applied to the non-applicant on 03.08.2004 for enhancement of load from 80 KVA from 225 KVA with enhancement of connected load from 238 KW to 415

KW alongwith a stand-by load of 400 KW with changeover arrangement. The MSEB issued load sanction letter dated 26.10.2004 demanding from the applicant an amount of Rs.3,99,823/- which included amount of Rs. 1,98,650/- as the cost of estimate towards the metering arrangement and equipment. The applicant raised his protest on this demand of MSEB as per his letter dated 11.11.2004 requesting there-in to reduce the cost of metering arrangement & equipment since the MSEB had clarified in the letter 29.10.2001 that the metering cost has to be paid by the consumer once in his life time except in the case of burnt meters as per MERC's order. Prior to this letter dated 29.10.2001, the MSEB sent to the applicant a demand note on 19.01.2001 for cost of meter followed by another letter dated 31.01.2001 stating therein that T.O.D. meter is required for MSEB's tariff metering. Accordingly, the applicant paid an amount of Rs.11,000/- as the cost of TOD meter on 20.12.2001. This fact of payment of meter cost has been communicated to the MSEB by the applicant under his letter dated 22.11.2004. Since MSEB did not reply the applicant's letter dated 11.11.2004 under which the unjust, improper and exorbitant demand was protested by the applicant, the applicant sent a reminder to the MSEB vide his letter dated 27.11.2004 requesting MSEB to do the needful and to sanction the applicant's load. Thereafter the applicant sent subsequent reminders on 15.01.2005 and 05.02.2005. The MSEB's Chief Engineer NUZ ultimately replied the applicant by his letter dated 31.01.2005 informing him that the matter has been referred to the Head Office of

MSEB and further that the applicant would be intimated finally on receipt of guidelines from the Head Office.

The applicant's representative further contended that the applicant did not receive any communication from the MSEB and hence a reminder was again sent by the applicant to MSEB on 12.03.2005 requesting MSEB not to impose penalty for exceeding contract demand and also to refund to him the penalty amount already charged to the applicant in his energy bills for the month of December-2004, January-2005 and February-2005. Since no reply was forth-coming from MSEB, the applicant sent a reminder to MSEB for giving clarification on the pending matter vide his letter dated 21.04.2005. Ultimately, the Superintending Engineer, NUC replied the applicant on 30.04.2005 to the effect that the applicant shall have to bear the cost of metering cubicle and H.T. cable required for this purpose. The applicant again wrote to the Superintending Engineer MSEB vide his letter dated 11.05.2005 communicating to him that his earlier letter dated 11.11.2004 is not fully replied by the MSEB and also that the provision of rules under which the payment of metering arrangement became due to him has not been mentioned. The Superintending Engineer, NUC vide his letter dated 21.05.2005 replied to the applicant that since capacity of the metering equipment has to match with the load requirement, it has become necessary to install the metering equipment with appropriate ratio of H.T. cubicle and further that the applicant is liable to pay the cost of the same as per MSEB's demand letter dated 26.10.2004. The Superintending Engineer also informed the applicant that since the applicant has not

paid the necessary charges, enhancement of load is not effected and that there is no question of withdrawing the penalty.

Quoting the above details, the applicant's representative vehemently contended that the act of MSEB is against the provisions contained in Regulation No. 2.1 (q) and Regulation No. 14.2.4 of the Supply Code Regulations.

The applicant's representative invited our attention to the definition of word "meter" made in Regulation No. 2.1 (q) of the Supply Code Regulations and argued that the cost of Rs. 1,98,650/- charged by the non-applicant towards the cost of metering arrangement and equipment in the sanction letter dated 26.10.2004 is totally improper, unjust and illegal because the applicant has already paid the cost of T.O.D. meter way back in December,2001. He also invited our attention to the Chief Engineer's letter dated 29.10.2001 in which the Chief Engineer has informed the applicant that the cost of the T.O.D. meter is to be recovered once in lifetime of the consumer except in the case of burnt meter. The applicant's representative has produced on record a copy of this letter as also copies of several other communications relied upon by him.

The applicant's representative also relied upon the provision contained in Regulation No. 14.2.4 of the Supply Code Regulations and argued that the Distribution Licensee is not authorized to recover the price of the meter more than once during the supply of the applicant except in the case of burnt meter or lost meter. It is his contention that the demand note

given to the applicant needs to be revised so as to be in tune with the Supply Code Regulations.

On the point of charging penalty of Rs. 49,500/- from the month of December, 2004 to July, 2005, the contention of the applicant's representative is that the penalty charged is illegal because the MSEB had already issued a load sanction letter on 26.10.2004 raising the applicant's maximum demand to 225 KVA and raising his connected load to 415 KW. According to him, the only question to be decided was in respect of charging the applicant with an appropriate and legal cost. He further contended that the improper and unjust demand note of MSEB was protested and pursued by him diligently and further that the ultimate decision of the non-applicant confirming the demand note dated 26.10.2004 was not only unjust and improper but it also violated the legal provisions contained in the Supply Code Regulations. There is, therefore, no question of any payment of the penalty amount.

The applicant's representative lastly prayed that the non-applicant be directed to issue a revised demand note and to withdraw the demand penalty of Rs.49,500/- erroneously charged to the applicant.

The non-applicant has stated in his parawise reply dated 04.08.2005 that the applicant applied for enhancement of contract demand from 80 KVA to 225 KV and connected load from 238 KW to 415 KW which was sanctioned under the Chief Engineer's letter dated 26.10.2004 wherein the applicant was requested to pay amount of Rs.1,98,650/- towards the cost of the estimate. The applicant had already paid amount of

Rs. 12,350/- towards S.L.C. on 01.07.2004. Hence, the total cost of the estimate was Rs.2,11,000/- wherein the cost of providing H.T. cubicle of appropriate ratio matching with the contract demand and necessary cables for connection was included. The non-applicant has admitted that the applicant did pay an amount of Rs.11,000/- on 20.12.2001 towards the cost of T.O.D. meter. According to the non-applicant, since the applicant did not pay the amount requested for in the load sanction letter and also did not complete the formalities, the additional load was not released to him. Being a policy decision, the applicant's matter was referred to the Head Office of MSEB and the applicant was informed accordingly. The MSEB's H.O. ultimately informed the Chief Engineer, NUZ, MSEB, Nagpur on 04.04.2005 that since the meter and metering accessories should have capacity to match with the load requirement, it is necessary to replace the meter / C.T.P.T. and further that the applicant is liable to pay the cost of the same. The decision of the H.O. was communicated to the applicant on 21.05.2005.

According to the non-applicant since the applicant was exceeding the contract demand, the demand penalty was levied upon him and further that the penalty cannot be withdrawn as the applicant has not completed the formalities of the load sanction including of payment.

The non-applicant argued that the applicant had applied for enhancement of load and hence in order that the metering accessories should have capacity matching as per the load requirement, it was necessary to replace the existing

metering equipment by another set of equipment having adequate capacity.

The non-applicant also referred to Regulation No. 6.8 of the Supply Code Regulations and brought to our notice that any dispute with regard to the need for and extent of any such works pursuant to an application for increase or reduction in contract demand /sanctioned load shall be determined in accordance with the procedure set out in the said Regulations.

It is the submission of the non-applicant that there is no substance in the grievance application of the applicant.

We have carefully gone through the entire record of the case, all documents produced by both the parties as also all written & oral submissions made before us by both of them.

It is pertinent to note at the out set that the non-applicant has made a submission that the dispute in the present case needs to be sorted out by this Forum and for this purpose, he quoted the provision contained in Regulation No. 6.8 of the Supply Code Regulations. This clearly demonstrates that he wants this Forum to adjudicate upon in this matter.

The main question to be decided in the instant case is whether the demand note issued by the non-applicant as per his load sanction letter dated 26.10.2004 is proper and legal or otherwise. Once this question is resolved, the second matter about the penalty charged to the applicant becomes easier.

The applicant has quoted the definition of the word "meter" made in the Supply Code Regulations and

stressed that the non-applicant cannot charge the cost of metering arrangement including cubicle and H.T. cable.

The non-applicant's say on this point is that he is authorized to recover expenses relating to any increase in contract demand / sanctioned load if such an increase entails any works. The non-applicant during the course of hearing, has cited a provision contained in Regulation No. 6.8 of the Supply Code Regulations and argued that in the instant case it has become necessary to replace the existing metering equipment by another set of equipment having adequate capacity in order to allow the applicant to increase load sought for by him. The non-applicant laid stress on the words "any works" appearing in the first proviso to Regulation No. 6.8 of the Supply Code Regulations and argued that replacement of the existing meter equipment by another set of equipment of adequate capacity is covered by "any works" referred to in this Regulation. In view of this, it has become necessary for us to examine whether this contention of the non-applicant is in tune with the legal provision contained in Regulation No. 6.8 of the Supply Code Regulations. For this purpose we think it appropriate to have a look to the text of Regulation No. 6.8 of the Supply Code Regulations which reads as under.

"The Distribution Licensee shall increase or reduce the contract demand / sanction load of the consumer upon receipt of an application for the same from the Consumer.

Provided that where such increase or reduction in contract demand / sanctioned load entails any works, the Distribution Licensee may recover expenses relating there-to in accordance with the principles specified in Regulation 3.3,

based on the rates contained in the schedule of charges approved by the Commission under Regulation No. 18 :

“Provided further that any dispute with regard to the need for and extent of any such works pursuant to an application for increase or reduction in contract demand / sanctioned load shall be determined in accordance with the procedure set out in the Grievance Redressal Regulations”.

It is the crystal clear from the text of Regulation No. 6.8 of the Supply Code Regulations that the Distribution Licensee can recover expenses relating to any works in accordance with the principles specified in the Regulation 3.3.

In view of this, it is now necessary to see what is laid down in the provisions of Regulation 3.3 of the Supply Code Regulations. The items of expenses are set out in Regulation No. 3.2 (a), 3.3.1, 3.3.2, 3.3.3 and 3.3.4..

Under Regulation No. 3.2 (a) recovery of such expenses as may be reasonably incurred by the Distribution Licensee in providing electric line or electrical plant used for the purpose of giving supply in accordance with Regulation No. 3.3 is permissible. The case of the applicant does not fall under this Regulation No.. 3.2 (a) since there is no question of providing electric line or electrical plant.

Regulation No. 3.3.1 provides for recovery of expenses referred in Regulation No. 3.2 (a) above based on the rates contained in the schedule of charges approved by the Commission under Regulations No. 18. Schedule of charges proposed by the non-applicant are reportedly under process with the Commission and they are reportedly not as yet finalized.

Regulation No. 3.3.2 provides for carrying out works of laying of service line from distributing main to the applicant's premises and also for recovery of all expenses reasonably incurred on such works from the applicant. There is no question of carrying out any such works from the distributing main in the instant case. Hence, this provision is also not applicable to the applicant in the present case.

Regulation No. 3.3.3 provides that where provision of supply to an applicant entails works of installation of Dedicated distribution facilities, the Distribution Licensee shall be authorized to recover all expenses relating thereto. There is no question of installation of any dedicated distribution facilities in the instant case. The definition of the words "Dedicated Distribution Facilities" made in the Regulation No. 2.1 (g) of the Supply Code Regulations also makes this abundantly clear. Hence, this provision is also not attracted in the applicant's case.

Regulation No. 3.3.4 provides that where provision of supply to an applicant entails works, not being works referred to in Regulation 3.3.2 or 3.3.3 above for augmentation of the distribution system, the Distribution Licensee shall be authorized to recover proportionate expenditure from the applicant relating to such works. In the instant case, augmentation of the distribution system is not called for and hence this provision is also not applicable to the instant case.

In nut-shell, the contention of the non-applicant in respect of replacement of the existing metering equipment by another set of equipment of adequate capacity does not draw any support of Regulation No. 6.8 of Supply Code Regulations.

The proposed replacement of the existing metering arrangement and metering equipment is not covered by the words “any works” appearing in this Regulation. His submission made in this context cannot, therefore, be accepted by us.

The applicant on his part has rightly relied upon the definition of word “meter” made in Regulation No. 2.1 (q) of the Supply Code Regulations. This definition reads is under.

“ Meter means a set of integrating instruments used to measure, and / or record and store, the amount of electrical energy supplied or the quantity of electrical energy contained in the supply, in a given time, which include whole current meter and metering equipment, such as current transformer capacitor, voltage transformer or potential or voltage transformer with necessary wiring and accessories and also includes pre-payment meters”.

It is crystal clear from the above definition that once a meter is installed, it amounts to include whole current meter and metering equipment.

In the instant case, it is also pertinent to note that the non-applicant has already recovered the meter cost of Rs.11,000/- from the applicant and replaced the applicant’s previous meter by a T.O.D. meter way back in 2001.

The metering cost is also required to be paid by a consumer only once in his lifetime except in case of burnt meter as per MERC’s orders.

The cumulative meaning of all these things leads to this that the non-applicant cannot recover any cost for

replacement of the existing metering arrangement as rightly contended by the applicant's representative.

We are fully convinced from the cogent and legal submissions of the learned representative of the applicant that the non-applicant is not authorized to recover the cost of metering arrangement including cubicle and H.T. cable from the applicant in the instant case. It, therefore, follows that the demand note issued by the non-applicant on 26.10.2001 was not in tune with the legal provisions of the Supply Code Regulations.

It is also pertinent to note that the demand note amount charged to the applicant as per the non-applicant's sanction letter dated 26.10.2004 was rightly disputed by the applicant and further that the final decision in respect of this demand note came to be received by the Chief Engineer, NUZ, MSEB, Nagpur in March, 2005 when the Supply Code Regulations have already come into force. It is also evidenced by record that the dispute about the demand charges was pending with the non-applicant on 20.01.2005 when the Supply Code Regulations came into force. The action of non-applicant in charging the applicant as per the sanction letter dated 26.10.2004 was undoubtedly unjust, improper and illegal.

The applicant had contended during the course of hearing that the non-applicant has already started execution of a general policy to effect change over of metering equipments of the existing consumers at the cost of MSEB. In that, the CTPTs installed on the poles are removed from the poles and they are installed in metering cubicles at the

consumers' premises. When asked by us, the non-applicant admitted that such a free change over is being effected in respect of the existing consumers. According to the non-applicant in the instant case, increase of the sanctioned load is contemplated and hence the free change over facility can not be extended to the applicant. We have already held that the demand note of the non-applicant dated 26.10.2004 is unjust and not legal. Hence, it follows that the change over facility of the metering equipment will have to be extended by the non-applicant without charging any extra cost to the applicant since the applicant is also an existing consumer.

We, therefore, accept the grievance of the applicant in this respect and direct the non-applicant to revise the demand note in terms of the observations made by us in this order.

The second grievance of the applicant is in respect of improper levy of penalty for exceeding contract demand charged in the energy bills from the month of December, 2004 to July, 2005 . This penalty amount is of Rs. 49,500/-.

We have already concluded in the proceeding paragraphs that the demand note issued to the applicant amounting to Rs.3,99,823/- was not proper and legal. It is also pertinent to note that the applicant has protested this demand note of the non-applicant diligently. Not only this but the applicant has also perused his dispute by giving appropriate reasoning right from the date 11.11.2004. Since he has rightly disputed the demand note and since we have held that the demand note was not proper and legal, it follows that the

penalty raised against the applicant over the period in question is also mis-convinced.

The applicant has also contended that the Chief Engineer enhanced his contract demand from 80 KW to 225 KW and connected load from the 238 KW to 415 KW on 26.10.2004. Since he had disputed the demand note amount immediately after 26.10.2004 and since no final reply came to him till the end of Nov. 2004 and also because he was suffering monetary loss, the actual effect of the increased load was given by him from the month of December, 2004. The fact that the applicant gave effect to the increased load from the month of December, 2004 is also not disputed by the non-applicant. The non-applicant, on his part, has charged penalty for exceeding the sanctioned load to the applicant from the month of December, 2004. We are of the view that since the Chief Engineer had accorded his sanction in principle on 26.10.2004 for the increased load and because the demand note amount charged to the applicant has been rightly and diligently disputed by the applicant, the use of increased load sought for by the applicant cannot strictly be styled as un-authorized use of electricity.

In this regard, it will not be out of place to quote the order dated 14.07.2005 passed by MERC in case No. 2 of 2003 in the matter of non-compliance of Tariff Order directions by MSEB, regarding installation of meters, violation of connected load, power factor norms for LTPG consumers, etc. The text of the operative part of the order is re-produced below for the sake of enlightenment.

“Para 33 (e) : Assessment for violations would differ depending on the period of occurrence and its corresponding tariff and loads, as follows.:

- (1) Period prior to 10th June, 2003 (i.e. prior to E.A., 2003) : As per Clause 31(e) of MSEB’s Conditions of Supply.
- (2) Period from 10th June, 2003 to 30th November,2003 (uptil date of effect of Tariff Order): One and a half times the normal tariff for the load exceeding the sanctioned load measured by connected load method.
- (3) Period from 1st December,2003 onwards : If exceeding the sanctioned load has been measured by maximum demand recorded by meter, then two times the tariff applicable for the exceeded portion of the load (maximum demand minus sanctioned load). No penalty will be applicable if exceeding of sanctioned load is claimed on the basis of connected load method.

“Para 33 (f) : The MSEB shall refund any amounts collected on account of invocation of Connected Load / Power Factor penalty not in line with this dispensation, to the concerned consumers alongwith interest at the rate applied by MSEB to their consumers, from the date of collection till the date of refund, but not later than three months from this order”.

It is therefore clear that even in the case of violations, no penalty can be charged as held by MERC in para 33 (e) (3) of its order referred to above.

In the light of above, the penalty charged to the applicant becomes non-recoverable.

We, therefore, direct that the non-applicant should refund the penalty amount of Rs. 49,500/- to the applicant alongwith interest as laid down in the MERC's Order.

We further direct that the non-applicant shall report compliance of this order to this Forum on or before 14.10.2005.

Sd/-	Sd/-	Sd/-
(M.S. Shrisat)	(Smt. Gouri Chandrayan)	(S.D. Jahagirdar)
Member-Secretary	Member	CHAIRMAN

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO LTD's
NAGPUR URBAN ZONE, NAGPUR.**